

**In the  
Supreme Court of the United States**

**No. 2587**

MUSKOGEE COUNTY, OKLAHOMA, ET AL.,  
*Petitioners,*

VERSUS

UNITED STATES OF AMERICA,  
*Respondent.*

**PETITION FOR WRIT OF CERTIORARI AND  
BRIEF IN SUPPORT**

Petition for Writ of Certiorari Requiring the United States Circuit Court of Appeals for the Tenth Circuit to Certify to the Supreme Court of the United States, for Its Review and Determination, the Case of Muskogee County, Oklahoma, et al., Appellants v. United States of America, Appellee, No. 2587, and Brief in Support Thereof.

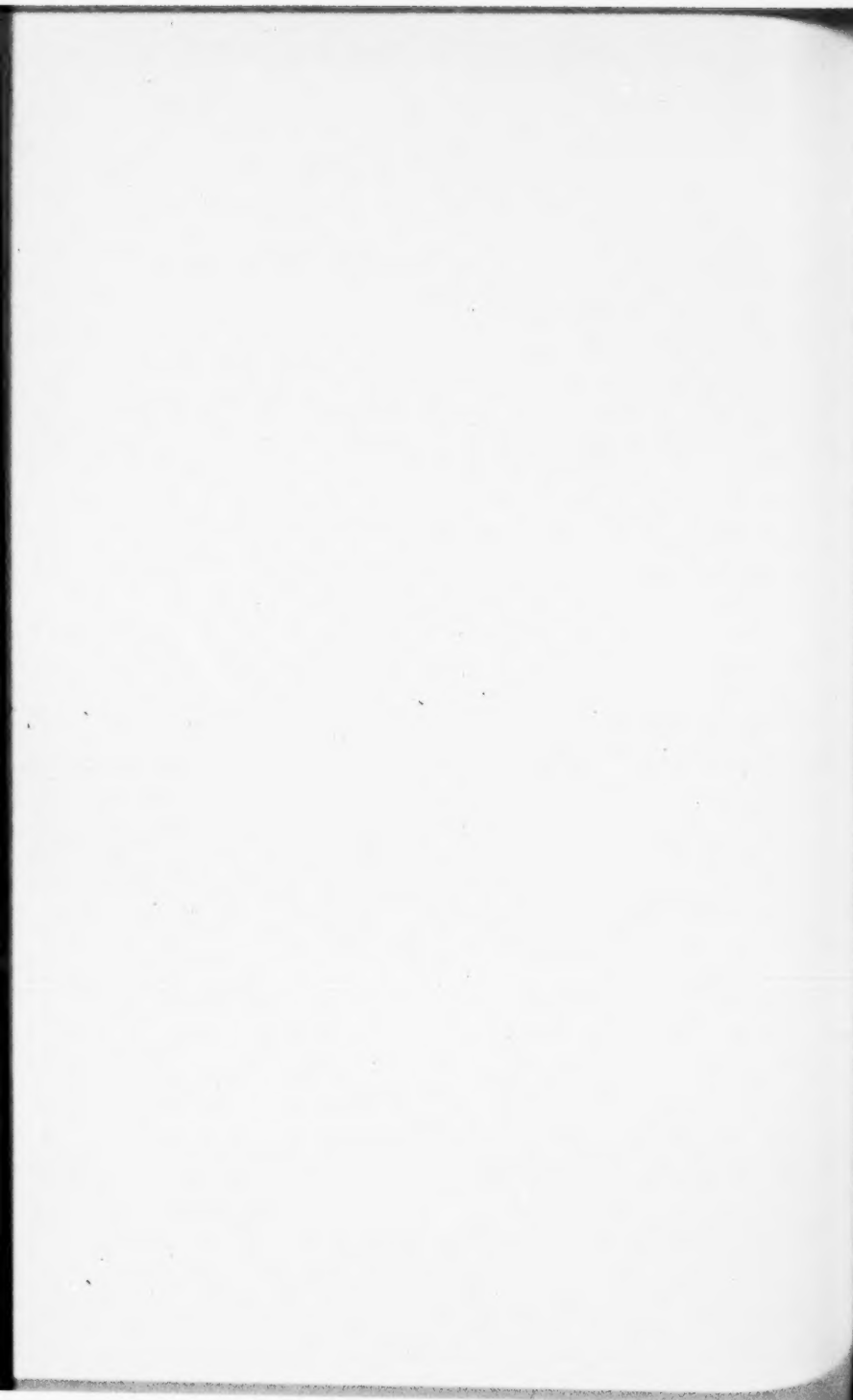
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April, 1943.



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*To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and Associate Justices of the Supreme Court of the United States.*

Your petitioners respectfully show:

**I.**

**SUMMARY STATEMENT OF THE MATTER INVOLVED**

This is an action brought by the United States, respondent herein, for itself and on behalf of Jefferson Harrison, a full blood restricted Indian of the Seminole tribe, to re-

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cover taxes allegedly unlawfully levied and collected upon certain lands in which said Indian retains a life estate after having deeded the property to his children; and to correct the records of Muskogee County, Oklahoma, so as to show said lands non-taxable.

Jefferson Harrison, a full-blood Seminole Indian, enrolled opposite Roll No. 35 (member tribe of the Five Civilized Tribes), had certain restricted funds held in trust for him by the Secretary of the Interior. The said Jefferson Harrison was, on June 12, 1912, allotted the SW $\frac{1}{4}$  of Sec. 4, Twp. 7 N., Range 7 East, in Seminole County, Oklahoma, containing 160 acres (Book 8, p. 300, Homestead and Allotment Records in Office of Five Civilized Tribes, Muskogee, Oklahoma), pursuant to the Act of Congress of July 1, 1898 (Vol. 30, Stat. L., p. 568); the NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of said Sec. 4 was deeded to Jefferson Harrison by the Seminole Nation as his homestead and made inalienable and non-taxable in perpetuity, as provided by said Act of July 1, 1898. The records of Seminole County disclose, the above lands and the homestead are still owned by Jefferson Harrison.

On October 3, 1932, the Secretary of the Interior purchased with restricted funds of said Jefferson Harrison, for his use and benefit, the following described real estate located in Muskogee County, State of Oklahoma, to-wit:

Lots One (1), Two (2), Three (3) and Four (4), and East Half of the West Half, and the South Half of the Southeast Quarter, and the South Half of the North Half of Southeast Quarter of Section Seven



(7), Township Thirteen (13) North, Range Seventeen (17) East, containing 439 acres, more or less.

That said lands above described were purchased from the Exchange Securities Company, a corporation of Tulsa, Oklahoma, and were upon the tax rolls of the county. A warranty deed, special form, was executed by said Exchange Securities Company conveying said land to Jefferson Harrison, and contained certain restrictive provisions therein regarding its lease, mortgage and salability, except with approval of the Secretary of the Interior or unless otherwise removed by operation of law (see Exhibit "A" T. 12-14).

On April 23, 1934, Jefferson Harrison made a gift of said above described property to his children, Jacob Harrison, June or Jonah Harrison and David Harrison by warranty deed, reserving unto himself a life estate (see warranty deed, Exhibit "B," T. 15-18). Said deed was on a restrictive form and was approved by the Secretary of the Interior.

Taxes were levied and assessed against the above described lands for the years 1936, 1937 and 1938. That on February 2, 1937, the said Jefferson Harrison paid said taxes on the above described property in the sum of \$220.26 to the county treasurer of Muskogee County, Oklahoma, in full payment of the 1936 taxes (see tax receipt, Exhibit "C," T. 19).

On June 25, 1938, said Jefferson Harrison designated as a homestead out of the above described property, the following described property, to-wit:

East Half of West Half of Section Seven (7), Township Thirteen (13) North, Range Seventeen (17) East, Muskogee County, Oklahoma, consisting of 160 acres.

This was done pursuant to Section 2 of the Act of June 20, 1936, as amended by the Act of May 19, 1937, for the purpose of obtaining a tax exemption. The certificate was received in the Office of the Five Civilized Tribes at Muskogee, Oklahoma, on July 11, 1938, and was filed for record in the county clerk's office of Muskogee County, Oklahoma, on September 16, 1938, and shows to have been approved by the Assistant Secretary of the Interior on September 21, 1938 (see Certificate marked Exhibit "D," T. 21). Taxes were again levied and assessed against all of the 439 acres above described for the year of 1937, including the 160 acres above described, which had been designated as a homestead by Jefferson Harrison.

On June 22, 1938, the said Jefferson Harrison paid all of the taxes on the 439 acres above described for the year 1937 in the sum of \$207.92 (see Exhibit "E," T. 23), of which \$102.85 was the taxes on the 160 acres designated as a homestead.

The taxes were again levied and assessed against all of the above 439 acres for the year of 1938, including the 160 acres above described, same being designated as a homestead land for the year 1938. That in November, 1939, a delinquent tax sale was held by Muskogee County, said sales being No. 5205 and 5207, and all of the above described 160

acres of land designated as a homestead, was sold and purchased by the county.

Thereafter, and on September 19, 1941, the United States of America, respondent herein, filed this suit for and on behalf of the said Jefferson Harrison, owner of the life estate in and to the last above described land, for the recovery of the taxes paid by him on all of the above described property, consisting of 429 acres, for the year 1936, and for \$102.85 paid by him on the 160 acres of land last above described, designated as homestead land, for the year 1937, and the cancellation of the delinquent tax sales No. 5205 and 5207, and further that the records of the county be expunged in so far as taxing said 160 acres of land designated as a homestead, as assessed for taxation for the years 1937, 1938 and subsequent and ensuing years, and further enjoining and restraining the taxing officials of Muskogee County from collecting or attempting to collect the taxes assessed and levied against said 160 acres of land designated as homestead lands, last above described, for the years 1937, 1938 and subsequent and ensuing years.

The majority opinion of the Tenth Circuit Court of Appeals in the case of *Board of County Commissioners of Creek County et al. v. Seber*, 130 Fed. (2d) 663, as well as the case at bar, was based upon the following Congressional Acts:

Act of Congress of June 20, 1936 (49 Stat. L. 1542):

“Sec. 1. \* \* \* There is hereby authorized to be appropriated \* \* \* the sum of \$25,000, to be expended \* \* \*

for the payment of taxes \* \* \* assessed against individually owned Indian land, the title to which is held subject to restrictions against alienation or encumbrance \* \* \* heretofore purchased out of trust or restricted funds of an Indian, where the Secretary (of Interior) finds that such land was purchased with the understanding and belief on the part of said Indian that after purchase it would be non-taxable \* \* \*.

“Sec. 2. All lands, the title to which is now held by an Indian subject to restrictions against alienation or encumbrance except with the consent of the Secretary of the Interior, heretofore purchased out of trust or restricted funds of said Indian, are hereby declared to be instrumentalities of the Federal Government and shall be non-taxable until otherwise directed by Congress.”

Amendatory Act of Congress of May 19, 1937 (50 Stat. L. 188, 25 U. S. C. A.), Sec. 412a (amended Sec. 2 above to read as follows):

“Sec. 2. All homesteads, heretofore purchased out of the trust or restricted funds of individual Indians, are hereby declared to be instrumentalities of the Federal Government and shall be non-taxable until otherwise directed by Congress: Provided, That the title to such homesteads shall be held subject to restrictions against alienation or encumbrance except with the approval of the Secretary of the Interior; and, provided further, that the Indian owner or owners shall select with the approval of the Secretary of the Interior, either the agricultural and grazing lands, not exceeding a total of one hundred and sixty acres, or the village, town or city property, not exceeding in cost \$5,000.00, to be designated as a homestead.”

The majority opinion in the Seber case said (130 Fed. [2d] 670):

“The taxable status of all property in Oklahoma is fixed as of January first of each year \* \* \*.”

The Act of June 20, 1936, was in force on January 1, 1937, and it was under that Act that the majority opinion permitted recovery of 1937 ad valorem taxes.

The Act of May 19, 1937, was in force on January 1, 1938, and respondent had designated the land as homestead on June 25, 1938, and it was under this Act that the majority opinion permitted recovery of 1938 ad valorem tax.

This action involved no disputed questions of fact (see Findings of Fact, T. 32-33).

## II.

### STATEMENT OF POINTS RELIED ON BY PETITIONERS

1. The Acts of Congress in question are unconstitutional because the Congress of the United States cannot, for purposes of exemption from state taxation, create a "Federal instrumentality" out of the person or property of an individual merely because such individual is possessed of a quantum of Indian blood.

2. The Act of Congress of June 20, 1936 (which deals with lands purchased out of an individual Indian's own restricted funds), and the Act of Congress of May 19, 1937 (which amends said 1936 Act by limiting it to homesteads) are not applicable to the lands here involved:

(a) The Acts apply only to an Indian who had never had a homestead prior to the purchase of property for him out of his restricted funds; said Acts have no application to

an Indian (such as the Seminole at bar) who had been the beneficiary of allotted lands, and thus was possessed of a homestead long before property was purchased for him out of his restricted funds.

(b) The Acts do not even purport to apply to anything except “\* \* \* [homestead] lands, the TITLE to which is NOW held by an Indian \* \* \*, heretofore purchased out of trust or restricted funds of SAID Indian \* \* \*.”

3. The court below is without jurisdiction because the taxes should have been paid under protest and suit should have been brought within the time prescribed by statute; or as an alternative, an affidavit of erroneous assessment should have been filed; and, in any event, the action to recover the taxes was barred by the statute of limitations three years after said taxes were paid.

### III.

#### REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

1. Under facts closely analogous, the principal questions involved here were presented to and decided by the United States Circuit Court of Appeals, Tenth Circuit, in *Board of County Commissioners v. Seber*, 130 Fed. (2d) 663 (one judge dissenting), and on appeal to the Supreme Court of the United States *this Court granted petition for writ of certiorari on January 11, 1943.*

2. Congress has no power to grant exemption from state taxation to individuals merely because they happen to

have a quantum of Indian blood. The Commerce clause of the Constitution (Art. 1, Sec. 8), merely gives Congress the power "To regulate commerce with foreign nations and among the several states, and with the Indian Tribes \* \* \*." When a circuit court upholds legislation which constitutes so grave an interference with the taxing power of a state, then the Supreme Court of the United States should take jurisdiction in order to correct the abuse.

3. The Congress and the Federal courts have, no doubt, been influenced by *obiter dictum* of the Supreme Court in passing on questions arising out of treaty obligations. The Congress and the Federal courts have also been influenced by the language used in a certain line of cases which was overruled by *Helvering v. Mountain Producers Corp.*, 303 U. S. 376, 58 S. Ct. 623, 82 L. ed. 907. The Supreme Court of the United States should take jurisdiction here in order to settle the confusion that seems to obtain in so many high quarters.

Wherefore, your petitioners respectfully pray that a writ of certiorari issue to the Circuit Court of Appeals for the Tenth Circuit, charging said court to certify and send to this Court a full and complete transcript of the record and all proceedings of said Circuit Court had in the case numbered and entitled on its docket, No. 2587, Muskogee County, Oklahoma, *et al.*, Appellants v. United States of America, Appellee, to the end that this case may be reviewed and determined by this Court, as provided for by the statutes of the

United States, and that the judgment herein of said United States Circuit Court of Appeals be reversed by the Court, and for such relief as to this Court may seem proper.

Copies of the transcript of record in this case in the Circuit Court of Appeals for the Tenth Circuit are filed herewith in conformity with Rule No. 38 of this Honorable Court.

Respectfully submitted,

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